

RHS, RBS, RUS, FSA, USDA

of the indebtedness. The loan file must be documented to support the maturity granted for the loan.

[52 FR 6501, Mar. 4, 1987, as amended at 56 FR 8271, Feb. 28, 1991]

§ 1980.425 Availability of credit from other sources.

(a) Inability to obtain credit elsewhere is not a requirement for guaranteed assistance under this subpart.

(b) To be eligible for an insured loan under this subpart, the borrower must be unable to obtain the required credit from private or cooperative sources at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near the borrower's location(s) for loans for similar purposes and period of time. The borrower's inability to obtain such credit elsewhere will be determined in accordance with subpart A of part 1942 of this chapter.

§ 1980.426–1980.431 [Reserved]

§ 1980.432 Environmental requirements.

[See subpart A, § 1980.40 and subpart G of part 1940 of this chapter.]

Administrative

When required by subpart G of part 1940 of this chapter, the approving official will review Form FmHA or its successor agency under Public Law 103-354 1940-20, "Request for Environmental Information," submitted by the borrower and the environmental impact assessment prepared by the environmental reviewer. The approving official will indicate his/her decision as part of the assessment when required. If the approving official determines that an EIS is required, he/she will notify the borrower and lender in writing.

§ 1980.433 Flood or mudslide hazard area precautions.

(See subpart A, § 1980.42.)

Administrative

The State Director is responsible for determining if a project is located in a special flood or mudslide hazard area. Refer to subpart B of part 1806 of this chapter [FmHA or its successor agency under Public Law 103-354 Instruction 426.2].

§ 1980.441

§ 1980.434 Equal opportunity and non-discrimination requirements.

(See subpart A § 1980.41.)

Administrative

The State Director will assure that equal opportunity and nondiscrimination requirements are met. If there is indication of non-compliance with these requirements, such facts will be reported by the Compliance Reviewing Officer or FmHA or its successor agency under Public Law 103-354 Official in writing to the Administrator, ATTN: Equal Opportunity Officer.

§ 1980.435–1980.440 [Reserved]

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for insured loans at loan closing or at the time the Loan Note Guarantee is issued for guaranteed loans. However, balance sheet equity in the amount of at least 20-25 percent will be required under the following circumstances:

(1) For new businesses since they do not have a history of proven operations and such businesses generally experience unforeseen startup expenses which may deplete the available cash resources.

(2) For businesses where the borrower does not or cannot offer a limited or full personal or corporate guarantee as required in § 1980.443 and thereby weakens the financial soundness of the loan.

(3) For energy related businesses since these types of projects may be technically feasible, but in many instances are more susceptible to higher risk. A higher equity position will assure management's commitment to the project.

(b) FmHA or its successor agency under Public Law 103-354 may also require more than a 10 percent equity investment in projects other than those in paragraphs (a)(1), (2) and (3) of this section if the reviewing official makes a written determination that special circumstances necessitate this course of action. Special circumstances are limited to credit factors which negatively affect the financial soundness of the loan, the chances of the project's success or the repayment ability of the borrower. Such determination will be in writing by the reviewing official and

explain fully what the special circumstances are and how FmHA or its successor agency under Public Law 103-354 decided upon the percentage of equity investment to be required in the individual case.

(c) FmHA or its successor agency under Public Law 103-354 will require the borrower to contribute all of the equity requirement in the form of either cash or tangible earning assets injected into the business and reflected on the balance sheet. Appraisal surplus and/or subordinated debt cannot be used in the calculation of the equity requirements.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 40039, July 27, 1993]

§ 1980.442 Feasibility studies.

A feasibility study by a recognized independent consultant will be required for all loans, except as provided in this paragraph. The cost of the study will be borne by the borrower and may be paid from funds included in the loan. The loan approval official may make an exception to the requirement of a feasibility study for loans to existing businesses when the financial history of the business, the current financial condition of the business, and guarantees or other collateral offered for the loan are sufficient to protect the interest of the lenders and FmHA or its successor agency under Public Law 103-354. FmHA or its successor agency under Public Law 103-354 will thoroughly document the justification for the exception to the feasibility study for such businesses. An acceptable feasibility study should include but not be limited to:

(a) *Economic feasibility.* Information related to the project site, availability of trained or trainable labor; utilities; rail, air and road service to the site; and the overall economic impact of the project.

(b) *Market feasibility.* Information on the sales organization and management, nature and extent of market area, marketing plans for sale of projected output, extent of competition and commitments from customers or brokers.

(c) *Technical feasibility.* Technical feasibility reports shall be prepared by individuals who have previous experience

in the design and analysis of similar facilities and/or processes as are proposed in the application. The technical feasibility reports shall address the suitability of the selected site for the intended use, including an environmental impact analysis. The report shall be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of income and/or production that are projected in the financial statements. The report shall also identify any constraints or limitations in these financial projections and any other facility or design related factors which might affect the success of the enterprise. The report shall also identify and estimate project operating and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. For the purpose of the technical feasibility reports, the project engineer or architect may be considered an independent party provided the principals of the firm or any individual of the firm who participates in the technical feasibility report does not have a financial interest in the project, and provided further that no other individual or firm with the expertise necessary to make such a determination is reasonably available to perform the function.

(d) *Financial feasibility.* An opinion on the reliability of the financial projections and the ability of the business to achieve the projected income and cash flow. An assessment of the cost accounting system, the availability of short-term credit for seasonal business and the adequacy of raw material and supplies.

(e) *Management feasibility.* Evidence that continuity and adequacy of management has been evaluated and documented as being satisfactory.

Administrative

FmHA or its successor agency under Public Law 103-354 loan approval officials will be selective in approving borrowers for new business ventures involved in unproven products, services, or markets. Should such businesses be considered, additional equity will usually be required.

[52 FR 6501, Mar. 4, 1987, as amended at 58 FR 40039, July 27, 1993]